IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.6694 OF 2006

Smt Shainajbi Chandasaheb
Mahalkari and Ors, .. Petitioners.

Vs

Vitthal Dattu Karande and ors. .. Respondents

Mr Rajeev Patil i/b Mr V.M.Mali, for the petitioners.

Mr Bhushan A Walimbe, for respondent no.1.

CORAM : D.B.BHOSALE,J.
DATE : 10.10.2006

PC:-

1. Heard the learned counsel for the parties.

2. This writ petition under Article 227 of the Constitution of India is directed against the order dated 21.8.2006 by which the application at Exhibit-11 filed by the petitioners seeking stay of Regular Darkhast No.32 of 2005 pending before the Civil judge, Jr Dn., Islampur, has been rejected. The petitioners are the daughters of the deceased defendant. The suit was filed for redemption of mortgage. During pendency of the suit, the father of the petitioner expired and his sons i.e. petitioner's brothers and mother were brought on record. It appears that despite diligent and

bonafide enquiry, the plaintiffs-respondents did not get the names of the petitioners and, therefore, they remained to be impleaded as defendants in the suit. The brothers and mother of the petitioners contested the suit right upto the High Court and they lost. The suit was filed in 1987. In execution the petitioners filed an application under Order 21 rule 97 and 101 of CPC. That application came to be rejected on merits on 4.1.2006. That order is under challenge in regular civil appeal no.12 of 2006 and during pendency of the appeal, the application at Exhibit-11 was filed and that application has been rejected by the impugned order.

3. It is now well settled that where the defendant in an action dies after institution of the suit, the plaintiff after diligent and bonafide enquiry impleads only some but not all the heirs as legal representatives, the heirs so impleaded represent the estate of the deceased and a decree obtained against them binds not only against those heirs who are impleaded in the action but the entire estate including the interest of those not brought on record. This is settled by the Supreme Court in N.K.Mohd. Sulaiman Sahib vs N.C.Mohd.Ismail Saheb & Ors, AIR 1966 SC 792. In my opinion, the court below has rightly rejected the application for the reasons stated therein and I see no

reason to interfere with the order impugned in writ jurisdiction under Article 227 of the Constitution of India. Hence the writ petition is dismissed. The dismissal of the writ petition, however, shall not preclude the petitioners to take appropriate remedy, if they ultimately succeed in the proceedings.

(D.B.BHOSALE,J.)